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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,321	10/22/2003	Michael A. McCabe	2002-IP-008949U1	5918

7590 08/08/2005

Robert A. Kent  
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EXAMINER
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SUCHFIELD, GEORGE A

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/691,321

**Applicant(s)**

MCCABE ET AL.

**Examiner**

George Suchfield

**Art Unit**

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/22/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3676

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16, drawn to a composition, classified in class 507, subclass 213.
  - II. Claims 17-33, drawn to a method of treating a subterranean formation, classified in class 166, subclass 278.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the composition could be used as a drilling fluid in well bore drilling applications, in soil stabilization and/or remediation processes. Also, the composition appears to have utility as a thickener in a coating or plastic formulation.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Robert A. Kent on August 2, 2005 a provisional election was made without traverse to prosecute the invention of Group II, claims 17-33. Affirmation of this election must be made by applicant in replying to this Office action. Claims

Art Unit: 3676

1-16 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 17-19 and 21-33 are rejected under 35 U.S.C. 102(a) as being anticipated by Juppe et al (6,620,769).

Juppe et al (note, e.g., the Abstract) discloses a process of fracturing or completing a subterranean formation penetrated by a well wherein a liquid gelling agent concentrate is admixed with an aqueous fluid, prior to injection, wherein the concentrate includes all the components recited in claim 17, such as an environmentally safe hydrocarbon carrier liquid, a particulate polymer, organophillic clay suspending agent, a dispersing surfactant.

Art Unit: 3676

As per claim 19, the hydrocarbon carrier component of Juppe et al appears encompassed by the recited hydrocarbon species.

As per claim 21, the corresponding pour point and flash point of the hydrocarbon carrier medium of Juppe et al (note col. 4, lines 36-45) falls within and/or overlaps the claimed ranges.

As per claim 22, the recited range of hydrocarbon carrier medium is deemed encompassed by the corresponding range(s) of hydrocarbon carrier medium set forth in Juppe et al (col. 4, lines 46-55).

As per claims 23-25, it is deemed that the recited organophillic clay characteristics and/or composition are encompassed by the corresponding suspending agents set forth in Juppe et al (note cols. 5 and 6), especially in view of the myriad trademarks listed.

Such disclosure of Juppe et al appears to further encompass or include the organophillic clay concentration range of claim 26.

As per claims 26-29, the recited surfactants appear to fall within the corresponding types and particular surfactants used in Juppe et al (col. 6, line 48 - col. 7, lines 13).

Such disclosure of Juppe et al appears to further encompass or include the surfactant concentration range of claim 30.

As per claims 31 and 32, the recited particulate gelling agent(s) appear to fall within the corresponding solid or particulate gelling agents used in Juppe et al (col. 2, lines 50-58; col. 7, lines 23 – col. 8, line 24).

Such disclosure of Juppe et al appears to further encompass or overlap the polymer or gelling agent concentration range of claim 33.

Art Unit: 3676

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juppe et al (6,620,769) as applied to claim 17 above, and further in view of Patel et al (5,189,012).

Patel et al discloses the use of an environmentally safe hydrocarbon medium in a borehole which comprises a mixture of hydrocarbons within a C2-C14 range, resulting from the hydrogenation of a petroleum stream (note col. 5, lines 35-63).

Accordingly, it would have been obvious to one of ordinary skill in the art to which the invention pertains, to employ the hydrocarbon mixture as the environmentally safe hydrocarbon carrier fluid in the well treatment process of Juppe et al, as taught by Patel et al, in order to provide exemplary rheological and performance characteristics to the fracturing or gravel packing/well completion fluid of Juppe et al, over a wide variety of wellbore conditions.

As per claim 21, Patel et al indicates their hydrocarbon mixture carrier medium exhibits a flashpoint in excess of 200oF (col. 8, lines 7-18)

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

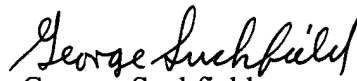
Other references cited disclose processes for drilling, completing and/or stimulating/fracturing a well utilizing various liquid gelling agent concentrate formulations and/or environmentally safe hydrocarbon mediums.

Art Unit: 3676

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Suchfield whose telephone number is 571-272-7036. The examiner can normally be reached on M-F (6:30 - 3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
George Suchfield  
Primary Examiner  
Art Unit 3676

Gs  
August 3, 2005